

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
CIVIL DIVISION

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MARESA WRIGHT and GREGORY WRIGHT, : Civil Action No. 08 CV 6025 (WC)

Plaintiffs, :

-against- :

THE UNITED STATES OF AMERICA and THE :
CHEROKEE 8A GROUP, INC., :

Defendants. :
----- X

ANSWER TO COMPLAINT

Defendant, THE CHEROKEE 8A GROUP, INC., by and through its attorneys,
WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP, as and for their Answer to
plaintiffs' Complaint, respond as follows:

**AS TO THE FIRST CAUSE OF ACTION ON BEHALF OF PLAINTIFF,
MARESA WRIGHT**

1. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph numbered "1" of plaintiff's Complaint.
2. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph numbered "2" of plaintiff's Complaint.
3. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph numbered "3" of plaintiff's Complaint.
4. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph numbered "4" of plaintiff's Complaint.
5. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph numbered "5" of plaintiff's Complaint.

6. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph numbered "6" of plaintiff's Complaint.

7. Defendant denies each and every allegation contained in paragraph numbered "7," of plaintiff's Complaint and refers all questions of law to the Court.

8. Defendant denies each and every allegation contained in paragraph numbered "8" of plaintiff's Complaint and refers all questions of law to the Court.

9. Defendant denies each and every allegation contained in paragraph numbered "9."

10. Defendant admits to the allegations contained in paragraph "10."

11. Defendant admits to the allegations contained in paragraph "11."

12. Defendant admits to the allegations contained in paragraph "12."

13. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph numbered "13" of plaintiff's Complaint.

14. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph numbered "14" of plaintiff's Complaint.

15. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph numbered "15" of plaintiff's Complaint.

16. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph numbered "16" of plaintiff's Complaint.

17. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph numbered "17" of plaintiff's Complaint.

18. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph numbered "18" of plaintiff's Complaint.

19. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph numbered "19" of plaintiff's Complaint.

20. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph numbered "20" of plaintiff's Complaint.

21. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph numbered "21" of plaintiff's Complaint.

22. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph numbered "22" of plaintiff's Complaint.

23. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph numbered "23" of plaintiff's Complaint.

24. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph numbered "24" of plaintiff's Complaint.

25. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph numbered "25" of plaintiff's Complaint.

26. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph numbered "26" of plaintiff's Complaint.

27. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph numbered "27" of plaintiff's Complaint.

28. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph numbered "28" of plaintiff's Complaint.

29. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph numbered "29" of plaintiff's Complaint.

30. Defendant admits to the allegations contained in paragraph "30."

31. Defendant denies each and every allegation contained in paragraph numbered "31."

32. Defendant admits to the allegations contained in paragraph "32."

33. Defendant admits to the allegations contained in paragraph "33."

34. Defendant admits to the allegations contained in paragraph "34."

35. Defendant denies each and every allegation contained in paragraph numbered "35" of plaintiffs' Complaint and refers all questions of law to the Court.

36. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph numbered "36" of plaintiff's Complaint.

37. Defendant denies each and every allegation contained in paragraph numbered "37."

38. Defendant denies each and every allegation contained in paragraph numbered "38."

39. Defendant denies each and every allegation contained in paragraph numbered "39" of plaintiff's Complaint and refers all questions of law to the Court.

40. Defendant denies each and every allegation contained in paragraph numbered "40" of plaintiff's Complaint and refers all questions of law to the Court.

41. Defendant denies each and every allegation contained in paragraph numbered "41."

42. Defendant denies each and every allegation contained in paragraph numbered "42."

**AS TO THE CAUSE OF ACTION ON BEHALF OF PLAINTIFF,
GREGORY WRIGHT**

43. Defendant repeats, reiterates and realleges each and every admission and denial heretofore made to the allegations contained in paragraphs numbered "1" through "42" of plaintiff's Complaint in response to paragraph "43" with the same force and effect as if here repeated and again set forth at length.

44. Defendant denies each and every allegation contained in paragraph numbered "44" of plaintiff's Complaint.

**AS AND FOR A FIRST SEPARATE
AND COMPLETE AFFIRMATIVE DEFENSE**

The Complaint fails to state a cause of action.

**AS AND FOR A SECOND SEPARATE
AND COMPLETE AFFIRMATIVE DEFENSE**

Any damages suffered by the injured Plaintiff are the result of the culpable conduct, fault, intervening or superseding intentional conduct or negligence of other persons for whose conduct this Defendant is not legally responsible.

**AS AND FOR A THIRD SEPARATE
AND COMPLETE AFFIRMATIVE DEFENSE**

The damages alleged to have been sustained by the injured Plaintiff, if any, were caused in whole or in part by the culpable conduct of the Plaintiff without any culpable conduct on the part of the answering Defendant, and, therefore, the amount of damages, if any, recovered by the Plaintiffs should be diminished in that proportion to which the culpable conduct attributed to the injured Plaintiff bear to the culpable conduct which caused said damages, if any.

**AS AND FOR A FOURTH SEPARATE
AND COMPLETE AFFIRMATIVE DEFENSE**

In the event Plaintiff recovers judgment against these answering Defendants, in whole or in part, for the injuries allegedly sustained by the Plaintiff, these answering Defendants are entitled, pursuant to Section 4545 of the New York Civil Practice Law & Rules to a set-off or reduction for any damages awarded for economic loss, and for any such past or future costs or expenses which were or will, with reasonable certainty, be reimbursed or indemnified in whole or in part from any collateral source including, but not limited to, insurance.

**AS AND FOR A FIFTH SEPARATE
AND COMPLETE AFFIRMATIVE DEFENSE**

Upon information and belief, all risks and damages connected with the incident alleged in the Complaint, were, at the time and place mentioned, obvious and apparent and were known to the injured Plaintiff who assumed the risk of their injuries.

**AS AND FOR A SIXTH SEPARATE
AND COMPLETE AFFIRMATIVE DEFENSE**

The Plaintiffs have failed to name and join essential and necessary parties.

**AS AND FOR A SEVENTH SEPARATE
AND COMPLETE AFFIRMATIVE DEFENSE**

That the injuries alleged in the Plaintiffs' Complaint were not caused by the negligence, carelessness and/or culpable conduct of these answering Defendants nor were the injuries proximately caused by the result of any act or omission of these Defendants.

**AS AND FOR AN EIGHTH SEPARATE
AND COMPLETE AFFIRMATIVE DEFENSE**

Upon information and belief, plaintiffs failed to take reasonable measures to mitigate, obviate, diminish or otherwise act to lessen or reduce the injuries and damages alleged in the Complaint.

**AS AND FOR A NINTH SEPARATE
AND COMPLETE AFFIRMATIVE DEFENSE**

The injuries and damages allegedly suffered by the Plaintiff, if any, (which injuries and damages are specifically denied by the Defendants), were the result of culpable conduct or fault of third persons for whose conduct the Defendants are not legally responsible, and the damages recovered by the Plaintiff, if any, should be diminished or reduced in the proportion to which caused the damages. Any liability on the part of the Defendants (which liability is denied) if fifty percent or less or the liability of all persons which are the cause of the alleged injuries, if any, and the liability of the Defendants for non-economic loss does not exceed the Defendants' culpability of each person causing or contributing to the total liability for non-economic loss pursuant to CPLR Sections 1601 through 1603.

**AS AND FOR A FIRST CROSS-CLAIM AGAINST THE CO-
DEFENDANT, THE UNITED STATES OF AMERICA:**

If the plaintiff was caused to sustain damages at the time and place and in the manner set forth in his Complaint due to any culpability other than his own, such damages were sustained by reason of the primary and active carelessness, recklessness, negligence and/or affirmative acts of omission or commission of the co-defendant, THE UNITED STATES OF AMERICA, without any negligence or fault of the answering Defendant contributing thereto.

By reason of the foregoing, and under the principles of common law indemnity and/or contribution, the co-defendant is obligated to indemnify the answering Defendant by reason of the occurrence described in plaintiffs' Complaint, or, in the alternative, for such proportion of any judgment as the relative responsibilities may warrant, and the answering Defendant is entitled to have judgment over and against said co-Defendant for all or any verdict or judgment which may be recurring herein against the answering Defendants in this action.

**AS AND FOR A SECOND CROSS-CLAIM AGAINST THE
CO-DEFENDANT, THE UNITED STATES OF AMERICA:**

Upon information and belief, that if and in the event plaintiffs sustained the injuries and damages complained of, such injuries and damages were caused, in whole or in part, by reason of the culpable conduct and/or breach of contract of co-Defendant, THE UNITED STATES OF AMERICA, and the Answering Defendant is entitled to contribution and/or contractual indemnification therefrom.

By reason of the foregoing, in the event that any judgment or verdict is recovered against the answering Defendant, the answering Defendant is entitled to contribution and/or indemnification from, and to judgment over and against, said co-Defendant equal to the proportionate share of responsibility as is adjudged between the Defendants.

DEMAND FOR JURY TRIAL

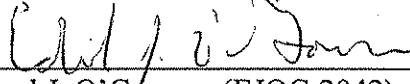
Answering Defendants hereby demand a jury trial and requests that the jury be composed of the maximum number of jurors allowed by law.

WHEREFORE, the answering Defendant demands judgment dismissing the Verified Complaint of the plaintiffs, but if the plaintiffs herein recovers against the answering Defendant, then answering Defendant demands that such recovery be diminished in proportion with all parties' culpable conduct, including but not limited to, the plaintiff's own conduct, together with all costs and expenses incurred in the defense of this action.

Dated: White Plains, New York
August 21, 2008

Respectfully submitted,

**WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER, LLP**



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TO:

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